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APR 06 2005

OFFICE OF PETITIONS

In re Application of :
Washington :
Application No. 10/632,323 : LETTER
Filed: August 4, 2003 :
For: ADDRESS BILLING SYSTEM :

This letter is in response to the communications submitted by applicant on November 4, 2004 and December 17, 2004.

The above-identified application was filed August 4, 2003. The Initial Patent Examination Division mailed a Notice of Incomplete Nonprovisional Application ("Notice") on September 10, 2004. The Notice indicated that the application had not been accorded a filing date because application was deposited without drawings in accordance with 35 U.S.C. 113 (first sentence).

The Notice indicated that the filing date of the instant application would be the date of receipt of the drawings. The Notice also stated any assertions that the drawings were submitted or are not necessary for a filing date must be by way of a petition directed to the Office of Petitions accompanied by the required petition fee.

On November 4, 2004, applicant responded to the Notice by submitting a copy of a drawing sheet. A supplemental response was submitted December 17, 2004. Applicant states that the application as deposited included a drawing. Applicant's letter was not styled as a petition, nor did it include the required petition fee. Applicant did, however, request that the application be accorded the original filing date. Applicant's letter included a copy of date stamp return postcard. The postcard stated as follows: "The following received today: Divisional Application for Keith A. Washington for ADDRESS BILLING SYSTEM consisting of 12 sheets declaration signed and authorization to charge my credit card for the amount of \$375.00." Applicant further states in his letter dated December 17, 2004 that he is of the opinion that "a drawing is not necessary to complete the application."

The USPTO file is the official record of the papers originally filed in this application. An applicant alleging that a paper was filed in the Office and later misplaced has the burden of proving the allegation by a preponderance of the evidence.

The Office has a well established and well publicized practice of providing a receipt for papers filed in the Office to any applicant desiring a receipt. The practice requires that any paper for which a receipt is desired be filed in the Office with a self-addressed postcard identifying the paper. A postcard receipt that itemizes and properly identifies the papers that are being filed serves as *prima facie* evidence of receipt in the Office of all the items listed thereon on the date stamped thereon by the Office. See section 503, Manual Of Patent Examining Procedure (MPEP 503).

The identifying data on the postcard should include: (A) applicant 's name(s); (B) title of invention; (C) number of pages of specification, claims (for nonprovisional applications), and sheets of drawing; (D) whether oath or declaration is included; (E) a list of any additional forms included with the application (e.g., application transmittal form, application data sheet, fee transmittal form, and /or provisional application cover sheet); and (F) amount and manner of paying the fee. A return postcard should be attached to each patent application for which a receipt is desired.

It is important that the return postcard itemize all of the components of the application. *If the postcard does not itemize each of the components of the application, it will not serve as evidence that any component which was not itemized was received by the United States Patent and Trademark Office (USPTO).* See, MPEP 503, emphasis added.

The copy of the postcard receipt submitted herewith is not accepted as *prima facie* evidence of submission of the drawing sheet in question as the postcard is not sufficiently itemized.

Nevertheless, as stated in MPEP 601.01(f), it is the practice of the PTO to treat a non-provisional application that contains at least some disclosure of a process or method as an application for which a drawing is not necessary for an understanding of the invention under 35 USC 113 (first sentence).

Moreover, MPEP 601.01(f) states that a nonprovisional application having at least one claim, or a provisional application having at least some disclosure, directed to the subject matter discussed above for which a drawing is usually

not considered essential for a filing date, describing drawing figure(s) in the specification, but filed without drawings will be treated as an application filed without all of the drawing figures referred to in the specification as discussed in MPEP 601.01(g), so long as the application contains something that can be construed as a written. Should the Technology Center determine that drawings are necessary under 35 U.S.C. 113 (first sentence) the filing date issue will be reconsidered by the USPTO.

A review of the official file reveals that the instant application as filed included three claims. The claims as filed are both vague and ambiguous. However, when the claims are viewed in the light most favorable to applicant, the claims can be construed to explicate a "process" within the meaning of MPEP 601.01(f). As it is USPTO practice to treat a non-provisional application that contains at least some disclosure of a process or method as an application for which a drawing is not necessary, the Notice of Incomplete Application mailed September 10, 2004 was mailed in error and is hereby **withdrawn**.

Accordingly, the application is entitled to a filing date of August 4, 2003.

The drawings submitted with the instant petition have not been entered into the application. If applicant desires to have the drawing entered, applicant is advised to submit a preliminary amendment prior to the issuance of the first Office action to amend the application to include the drawing.

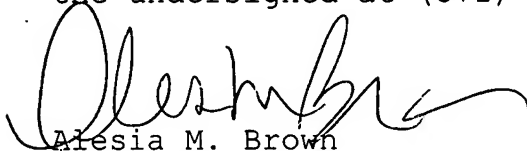
The application will be processed with only the papers present on filing with a filing date of August 4, 2003, without drawings as part of the original disclosure.

No fee is due in connection with this matter. Applicant, however, is advised that in accordance with the Notice, contentions such as those made by applicant that the drawing was submitted and/or was not necessary requires a petition and petition fee, along with a request for a refund of the petition fee. Despite the fact that the instant communication did not include a petition or a petition fee, the instant response has been issued as a courtesy because had applicant followed the Office procedure set forth in the Notice and submitted both a petition and the petition fee, the petition fee would have been refunded upon withdrawal of the Notice.

Applicant, however, is advised that in future any and all communications submitted in response to a Notice from the Initial Patent Examination Division must fully comply with the Notice. Specifically, should a Notice set forth a requirement for a petition and/or petition fee, any communication submitted without said petition and/or petition fee will be subject to dismissal without prejudice prior to a decision on the merits of the action complained of by applicant.

This application is being returned to the Initial Patent Examination Division for further processing with a filing date of August 4, 2003.

Telephone inquiries related to this decision may be directed to the undersigned at (571) 272-3205.

A handwritten signature in black ink, appearing to read 'Alesia M. Brown', with a stylized flourish at the end.

Alesia M. Brown
Petitions Attorney
Office of Petitions